

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Adelphia Communications)	CSR 6512-E & 6513-E
)	
Bright House Networks, LLC)	CSR 6543-E & 6544-E
)	
Charter Communications)	CSR 6415-E, 6416-E, 6480-E, 6485-E,
)	6486-E, 6487-E, 6489-E, 6499-E, 6500-E ,
)	6501-E, 6527-E, 6528-E & 6529-E
)	
)	
MCC Georgia LLC)	CSR 6478-E
)	
Mediacom Southeast)	CSR 6481-E
)	
Nineteen Unopposed Petitions for Determination of)	
Effective Competition in Forty-Seven Local)	
Franchise Areas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 31, 2005

Released: April 1, 2005

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. This Order considers nineteen unopposed petitions which cable operators (“the “Cable Operators”) have filed with the Commission pursuant to Sections 76.7, 76.905(b)(1) & (2) and 76.907 of the Commission’s rules for a determination that such operators are subject to effective competition pursuant to Section 623(a)(1) of the Communications Act of 1934, as amended (“Communications Act”) and are therefore exempt from cable rate regulation in the communities listed in Attachment A (the “Communities”). No opposition to any petition was filed. Finding that the Cable Operators are subject to effective competition in the listed Communities, we grant the petitions.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,¹ as that term is defined by Section 623(1) of the Communications Act, and Section 76.905 of the Commission's rules.² The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.³

¹47 C.F.R. § 76.906.

²See 47 U.S.C. § 543(1); 47 C.F.R. § 76.905.

³See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. Competing Provider Effective Competition

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if its franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds fifteen percent of the households in the franchise area.⁴ Turning to the first prong of this test, the DBS service of DirecTV, Inc. ("DirecTV") and DISH Network ("DISH") is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁵ The two DBS providers' subscriber growth reached approximately 23.16 million as of June 30, 2004, comprising approximately 23 percent of all MVPD subscribers nationwide; DirecTV has become the second largest, and DISH the fourth largest, MVPD provider.⁶ In view of this DBS growth data, and the data discussed below showing that more than 15 percent of the households in each of the communities listed on Attachment A are DBS subscribers, we conclude that the population of communities at issue here may be deemed reasonably aware of the availability of DBS services for purposes of the first prong of the competing provider test. With respect to the issue of program comparability, we find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer substantially more than 12 channels of video programming, including more than one non-broadcast channel.⁷ We further find that the Cable Operators have demonstrated that the Communities are served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Therefore, the first prong of the competing provider test is satisfied.

4. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. The Cable Operators sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code basis.⁸ The Cable Operators assert that they are the largest MVPD in the Communities because their subscribership exceeds the aggregate DBS subscribership for those franchise areas.⁹ Based upon the aggregate DBS subscriber penetration levels as reflected in Attachment A, calculated using 2000 Census household data, we find that the Cable Operator's have demonstrated that the number of households subscribing to programming services

⁴ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁵ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁶ *Eleventh Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming*, FCC 05-13, at ¶¶ 54-55 (rel. Feb. 4, 2005).

⁷ *See* 47 C.F.R. § 76.905(g).

⁸ Adelphia Petitions CSR 6512-E/6513-E at 6; Bright House Petitions CSR 6543-E at 7-9; Charter Petitions CSR 6415-E/6416-E at 5-6; Charter Petition CSR 6480-E at 6-7; Charter Petition CSR 6485-E at 6-7; Charter Petitions 6486-E/6487-E/6489-E at 6-8; Charter Petitions CSR 6499-E/6500-E/6501-E at 5-7; Charter Petitions CSR 6527-E/6528-E/6529-E at 5-7; MCC Petition CSR 6778-E at 6; Mediacom Petition CSR 6481-E at 7. MCC and Mediacom provided a report that provided zip code plus four information. The remaining petitions reported on a five digit zip code basis that was adjusted based upon an allocation methodology previously approved by the Commission.

⁹ *Id.*

offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that the Cable Operators have submitted sufficient evidence demonstrating that their cable systems serving the Communities set forth on Attachment A are subject to competing provider effective competition.

B. Low Penetration Effective Competition

5. Section 623(1)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if “fewer than 30 percent of the households in the franchise area subscribe to the cable service of the cable system.”¹⁰ One Cable Operator listed on Attachment A (Charter, CSR 6480-E) provided information showing that less than 30 percent of the households within its franchise area subscribe to its cable services. Accordingly, we conclude that the Cable Operator has demonstrated the existence of low penetration effective competition under our rules.

6. Based on the foregoing, we conclude that the five Cable Operators listed on Attachment A have submitted sufficient evidence to demonstrate that their cable systems are subject to effective competition.

III. ORDERING CLAUSE

7. Accordingly, **IT IS ORDERED** that the petitions filed by Adelphia Communications, Bright House Networks, LLC, Charter Communications, MCC Georgia, LLC, and Mediacom Southeast for a determination of effective competition in the communities listed on Attachment A **ARE GRANTED**.

8. **IT IS FURTHER ORDERED** that the certifications to regulate basic cable service rates granted to any of the local franchising authorities overseeing the Cable Operators **ARE REVOKED**.

9. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission’s rules.¹¹

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

¹⁰ 47 U.S.C. § 543(1)(1)(A).

¹¹ 47 C.F.R. § 0.283.

Attachment A

Cable Operators Subject to Competing Provider Effective Competition**Adelphia Cable Communications: CSR 6512-E**

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Carroll	VA0135	37.8%	12186	4607

Adelphia Cable Communications: CSR 6513-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Culpeper County	VA0224	26.1%	12141	3167

Bright House Networks, LLC: CSR 6543-E & 6544-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Brooksville	FL0241 FL1055	23.7%	3220	763

Charter Communications: CSR 6415-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Albertville	AL0039 AL0492	18.5%	6566	1212
Arab	AL0015	21.1%	3012	635

Charter Communications: CSR 6416-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Moundville	AL0544	37.5%	688	258

Mountain Brook	AL0086 AL0220	15.5%	7998	1238
Pelham	AL0178	26.1%	5637	1472
Irondale	AL0496	17%	4019	684

Charter Communications: CSR 6480-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscriber+
Bowdon	GA0399	41.6%	815	339
Cave Spring	GA0213	36.9%	404	149
Cedartown	GA0052	22.2%	3370	747
Rockmart	GA0087	30.4%	1541	468
Temple	GA0401	39.8%	864	344
Villa Rica	GA0282	31.8%	1550	493

Charter Communications: CSR 6485-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Chatsworth	GA0252	23.0%	1416	325
Dalton	GA0051	20.1%	9689	1943
Menlo	GA0538	38.9%	229	89
Ringgold	GA0172	27.0%	1033	279
Summerville	GA0114	32.3%	1823	588
Trion	GA0115	24.2%	832	201
Whitfield	GA0317	21.8%	18513	4038

Charter Communications: CSR 6486-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Broxton	GA0404	35.9%	527	189
Douglas	GA0015	17.8%	3977	707

Charter Communications: CSR 6487-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Dubin	GA0006	19.7%	6130	1207

Charter Communications: CSR 6489-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Zebulon	GA0698	43.5%	464	202

Charter Communications: CSR 6499-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Upson County	GA0891	20.0%	6577	1316

Charter Communications: CSR 6500-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Manchester	GA0099	21.2%	1629	346
Warm Springs	GA0473	40.6%	175	71

Charter Communications: CSR 6501-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Hamilton	GA0775	38.2%	131	50

Charter Communications: CSR 6527-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Anderson	SC0028	22.0%	10641	2340
Spartanburg	SC0031	18.9%	15989	3025
Gaffney	SC0007	25.2%	5304	1335
Union City	SC0008	23.5%	3791	890
Laurens	SC0065	24.5%	3952	970
Clinton	SC0149 SC0094	20.7%	2683	554
Williamston	SC0218 SC0219	27.2%	1590	433
Pickens	SC0312 SC0523 SC0584 SC0290	27.8%	24379	6783

Charter Communications: CSR 6528-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Chester	SC0105	31.0%	2465	765

Charter Communications: CSR 6529-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Camden	SC0130 SC0129	24.6%	2874	706

MCC Georgia LLC: CSR 6478-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
McRae	GA0026	20.6%	1057	218

Mediacom Southeast LLC: CSR 6481-E

Communities	CUIDS	CPR*	2000 Census Households+	DBS Subscribers+
Flat Rock	NC1008	16.6%	1169	194
Fletcher	NC1007	20.0%	1744	354
Henderson	NC0050	19.2%	28992	5575
Hendersonville	NC0012	15.6%	4579	714
Laurel Park	NC0051	15.4%	930	143

Cable Operator Subject to Low Penetration Effective Competition**Charter Communications: CSR 6480-E**

Communities	Franchise Area Households	Cable Subscribers	Penetration Level
Haralson	6292	72	0.11%

CPR = Percent DBS penetration

+ = See Cable Operator Petitions